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SUBJECT: Mongolia Ponders Transparency Agreement with U.S.

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¶1. (SBU) SUMMARY: Acting on a commitment to the Mongolian Government at last year's US-Mongolia Trade and Investment Framework Agreement (TIFA) talks (reftel A), Assistant U.S. Trade Representative Timothy Stratford proposed negotiating a Transparency Agreement (TA) with the Government of Mongolia. The GOM has so far shown profound reluctance to embrace the proposal, in the apparent belief that Mongolia does not need a TA; that USTR's offer accuses Mongolia of opacity in its trade dealings; and that the move is simply a tactic to further delay discussion on the GOM's overarching goal: a Free Trade Agreement (FTA) with the United States. Post and USTR have argued that TAs are cornerstone agreements with trading partners and must be part of any deep and lasting bilateral trade relationship, the lack of which will limit improvements in US-Mongolia trade relations. Although the Mongolians are not hopelessly opposed to negotiating a TA, they look to next month's TIFA talks in Washington for answers to their remaining questions on the TA. Post provides the following information to feed into a response to Mongolia's ongoing attempt to link movement on a Transparency Agreement with a Free Trade Agreement. END SUMMARY.

¶2. (SBU) Following the March 2007 TIFA talks, USTR committed itself to a concrete step that would advance US-Mongolia bilateral trade relations without crafting a comprehensive FTA, for which USTR did not consider Mongolia to be ready. In a June 26, 2007 letter to the Ministry of Industry and Trade (MIT), Assistant U.S. Trade Representative Timothy Stratford proposed that Mongolia and the U.S. consider negotiating a United States-Mongolia Transparency Agreement (UMTA). Stratford wrote that the USG considers transparency a "core trade and investment issue," and that provisions on transparency are "cornerstones of US-negotiated free trade agreements." He added that transparency is an integral part of trade agreements such as the WTO, which Mongolia joined in 1997. Stratford noted that businesses and other stakeholders would look more favorably on a GOM that formally adopted transparency concepts in laws and regulations that affect the marketplace, and that a TA would likely inspire

confidence among U.S. investors in Mongolia, contributing to closer ties between the U.S. and Mongolia. He offered the GOM the basic provisions of the Korea-US Free Trade Agreement (KORUS) to provide GOM a sense of the kind of provisions a TA would encompass.

Mongolian Concerns, USTR Responses

¶13. (SBU) From July through early November 2007, MIT/GOM maintained a conspicuous silence on the TA proposal, despite repeated USG requests for a response. Post's contacts at MIT informally told us of a vague push-back by other ministries. A mid-November 2007 DVC with USTR, Post and the Department of Commerce's International Trade Administration spurred MIT to provide a more concrete accounting of GOM concerns. Following a change of government in Mongolia in December, the new administration revealed additional concerns.

¶14. (SBU) GOM concerns can be summed up in five points, followed by our recommended responses:

Will a TA Lead to an FTA?

¶15. (SBU) Mongolian Concern No. 1: Is a US-Mongolia Transparency Agreement (UMTA) an end unto itself, or would it lead to a Free Trade Agreement (FTA)? If a UMTA is part of an incremental process that might lead to more bilateral trade agreements, why is it not part of an overall FTA agreement in the first place?

-- The USG has noted that transparency is an end in and of itself, as well as a step in an FTA process. The USG, WTO and other trade organizations clearly consider transparency in the formation and

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execution of laws and regulations for international trade to be, in and of itself, a key priority. USTR noted that the foreign business community in Mongolia had expressed concerns about transparency, and that the USG views transparency and a TA as an important way to strengthen business development.

-- USTR further noted that Mongolia is not yet ready for an FTA, but that the conclusion of a TA would make it a more competitive candidate for an FTA. And even in the absence of an FTA, a TA would increase Mongolia's attractiveness to U.S. investors.

Why Is USTR Pushing the KORUS TA?

¶16. (SBU) Mongolia Concern No. 2: Why was the proposed UMTA -- an almost verbatim copy of a section of the Korean-US Free Trade Agreement (KORUS) -- not adapted to reflect Mongolian conditions?

-- USTR explained the KORUS FTA was being submitted as a reference point, and an example of the sort of TA that the USG had in mind for Mongolia. It was not a formal offer of a proposed UMTA. The KORUS TA provides ideas for the basic principles inherent in any TA agreement. The USG's general expectation is that an UMTA would resemble the Korean TA, in terms of the principles of transparency. The USG recognizes that some provisions might not be easy for Mongolia to implement immediately; if that is the case, the US is willing to work with the GOM to offer support and flexible benchmarks/timetables for legal and regulatory changes, as well as for the execution of any TA. However, the core substance of the TA -- administrative procedures, and public outreach on drafting measures for laws and regulations -- matter to us, and need to be a part of any TA entered into between the two countries.

Does the USG Believe Mongolia Lacks Transparency?

¶17. (SBU) Concern No. 3: Mongolian law and regulation already provide for transparency, and the GOM is working to address the system's weaknesses. So why does Mongolia need a formal agreement? Were there any specific complaints from investors regarding a lack of transparency?

-- The USG recognizes that Mongolia is taking steps to promote transparency, and that a letter of agreement on a TA makes the US-Mongolia trade and economic relationship closer. USTR noted that signing a TA would raise confidence in moving toward an FTA.

-- Post made clear that it had informally received a variety of transparency-related complaints and concerns from private companies.

Post observed that in general, transparency is not a concept applied only certain laws and regulations; rather, that any laws and regulations affecting the conduct of business in Mongolia need to be transparent. The reality is that there remains much doubt over how, and at what point, the GOM shares information with the public. Moreover, there are gaps in process, not only in business issues but in terms of budgetary plans, elections, uranium policy, and amendments to the mining law.

What About Mongolia's Reputation?

¶8. (SBU) Mongolian Concern No. 4: Would adopting a TA suggest that Mongolia is less than transparent? And would such a suggestion not damage Mongolia's reputation among investors? Isn't the UMTA proposal really a slap at Mongolia's good-faith efforts to promote transparency? We've come a long way in these past 17 years.

-- Far from being a criticism, let alone an insult, a UMTA would send a positive signal to observers and investors. If Mongolia were an unimportant trading partner, the USG would not even have contemplated such an agreement. A UMTA would let everyone know that Mongolia could be (and already is, in some respects) functioning

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transparently at a high level.

Is All This Really Necessary?

¶9. (SBU) Mongolian Concern No. 5: Exactly how important is a UMTA to US-Mongolia bilateral trade relations?

-- Based on USTR guidance and positions mentioned by the Ambassador during his meeting with Industry and Trade Minister Narankhuu (reftel B), Commoft made clear that a UMTA is crucial for enhancing bilateral trade relations, and that not doing so would be seen by the USG as signal that Mongolia does not want to face the hard work required to deepen the relationship. The GOM needs to realize that the USG sees transparency as a core, non-negotiable issue in commercial and trade relations. It matters to us and must be part of our relationship. By choosing to negotiate a TA, Mongolia would demonstrate that it is serious about its trade agenda.

¶10. (SBU) (Note: Privately, some Mongolian counterparts have doubted USG intentions, asserting that the USG was foisting UMTA on Mongolia as an FTA-delaying tactic. These questions were recently put to Commoft by Minister Narankhuu's recently appointed personal advisor. Such advisors often reflect a given minister's unspoken concerns. End Note.)

So What's in it for Us?

¶11. (SBU) Further conversations between Post and MIT have led us to conclude that the GOM is ambivalent about a UMTA but not completely opposed to concluding such an agreement, provided that some GOM concerns could be assuaged. Part of the problem is that the GOM remains unsure of what a UMTA would require of them, and whether they would receive help to implement its provisions. (These are important issues for the under-resourced GOM.) The personal advisor to the MIT Minister informed us that the GOM's primary concern is that the USG acknowledge that a UMTA should provide significant momentum toward an FTA for Mongolia.

¶12. (SBU) On the plus side, Mongolia's new Prime Minister S. Bayar recently told the Ambassador he considers the UMTA a reasonable proposal that is worth consideration. Bayar is not given to gratuitous, feel-good statements; we are encouraged by his positive

impression of UMTA.

General Conclusions for TIFA #4

¶13. (SBU) The GOM would clearly prefer to move directly to FTA negotiations. Repeated USG explanation of why Mongolia is still unprepared for such a move has not yet gained much traction. To date, there has been no firm commitment by the GOM on a UMTA, but MIT Minister Narankhuu's personal advisor says the GOM seeks a USG commitment, or confirmation, that a UMTA would lead to an FTA, or some reasonable facsimile thereof. As the advisor put it bluntly: "What does a TA lead to? What sort of FTA mileage does UMTA get for Mongolia?"

¶14. (SBU) The GOM does not appear to fully understand what TAs are all about, and what they require of signatories. The USTR may need to address TA requirements during TIFA #4 in practical but general terms, as Mongolia's capacity and will to implement a TA are not yet fully understood yet.

¶15. (SBU) The GOM remains prickly about the negative implications of a UMTA. The GOM argues that it would be insulting for the U.S. to sit in judgment of Mongolia's transparency, or lack thereof, and that pursuing a UMTA is an inherent criticism of Mongolia. We have repeatedly pointed out the holes in these perceptions, noting that a UMTA, in and of itself, would acknowledge Mongolia's capacity and will to negotiate and implement this challenging but essential

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agreement. The USG would not have presented the GOM with a proposal that Mongolia could not have acted upon. This is not criticism, but praise.

¶16. (SBU) If the Mongolians ask how important a UMTA is to our bilateral trade relationship, USTR may want to state, as the Embassy has in one-on-one meetings, that UMTA is an essential next step in our bilateral relationship, and that inaction on this front would put the relationship on hold. If the Mongolians signal a willingness to begin UMTA negotiations, we will need to make clear that the resulting agreement is not a superficial or perfunctory deal, but a serious and important undertaking, and one that must be implemented assiduously. The Mongolians must understand that there would be a price to pay for promising to engage but then failing to do so.

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